

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

**EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION)**

Plaintiff,

v.

**NSC CHICKEN, LP
d/b/a CHICKEN EXPRESS**

Defendant.

Case No. 14-cv-01056-HE

CONSENT DECREE

Plaintiff Equal Employment Opportunity Commission (“EEOC”) commenced this action alleging that Defendant NSC Chicken LP (“NSC”), doing business as Chicken Express, discriminated against several employees based on their national origin when NSC instituted a compensation practice which disqualified certain Hispanic and Latin American kitchen staff from receiving overtime wages for hours worked in excess of forty hours per week in violation of Title VII of the Civil Rights Act of 1964, as amended, (“Title VII”). NSC’s practice of not paying Hispanic and Latin American kitchen staff employees overtime deprived Charging Party Kennedy Zapet and the other aggrieved employees of their right to equal employment terms and conditions of employment.

THEREFORE, for purposes of settlement, it is the finding of this Court, made on the pleadings and upon agreement of the parties, that: (i) this Court has jurisdiction over the parties to and the subject matter of this action; (ii) the purposes of Title VII will be

carried out by the entering of this Decree; (iii) this Decree is intended to and does resolve all claims asserted in this action; and (iv) the terms of this Decree constitute a fair and equitable settlement of all claims asserted in this action; and (v) this Consent Decree is being entered with the consent of the parties for purposes of settlement.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

I. General Provisions

A. Compliance with the terms of this Consent Decree resolves all issues alleged in EEOC charge Kennedy Zapet v. NSC Chicken, LP d/b/a Chicken Express, Charge No. 564-2012-00266, which was filed prior to the date of this Decree. This decree resolves claims brought by EEOC on behalf of Kennedy Zapet, (hereinafter the "Charging Party"), and the following identified aggrieved parties: Adriana Ayala, Juan Gramajo, Noel Lopez, Hector Machado, Esdrón Rojas, Trinidad Rojas, Nato Rodas, Ireto Rodas, Juan Solis, Olivia Soto & Jesus Zapata (hereinafter the "Aggrieved Individuals"), against NSC.

B. NSC shall not discriminate against any person who has made a charge, testified, assisted, or participated in any manner in any proceeding under Title VII concerning Charge No. 564-2012-00266.

C. All hiring, promotion, discharge practices, and other terms and conditions of employment of NSC shall be conducted in a manner which does not discriminate on the basis of national origin, Hispanic or Latin-American, in violation of Title VII of the Civil Rights Act of 1964, as amended.

D. NSC shall not set its wage scales or rates of pay, its assignment of overtime

hours, its overtime pay, or any other form of compensation, based upon the national origin of its employees, and shall not retaliate against any current or former employee who has benefited in any way as a result of this Consent Decree.

II. Relief for Charging Party and Other Aggrieved Individuals

A. Monetary Relief

NSC shall pay Kennedy Zapet and the Aggrieved Individuals a total amount of \$15,000.00 (the "Settlement Amount"). The Settlement Amount includes all relief claimed for compensatory damages under Title VII. The EEOC acknowledges that back pay in the amount of \$22,000.00 has been previously paid by NSC to Kennedy Zapet and the Aggrieved Individuals. The amount of \$15,000 shall be paid by NSC to the Charging Party and the Aggrieved Individuals for compensatory damages. NSC shall pay \$1,250.00 to each person named as follows: Kennedy Zapet, Adriana Ayala, Juan Gramajo, Noel Lopez, Hector Machado, Esdron Rojas, Trinidad Rojas, Nato Rodas, Ireto Rodas, Juan Solis, Olivia Soto, and Jesus Zapata, for a total of \$15,000.00.

B. Delivery of Checks by NSC

Within fifteen (15) days of the Court's entry of the Consent Decree, NSC shall report to the Commission when the checks were mailed (or hand-delivered) to each person: Kennedy Zapet, Adriana Ayala, Juan Gramajo, Noel Lopez, Hector Machado, Esdron Rojas, Trinidad Rojas, Nato Rodas, Ireto Rodas, Juan Solis, Olivia Soto, and Jesus Zapata. NSC shall provide the Commission with copies of the recipients' canceled checks or other evidence showing that the checks were cashed by each of the persons named above. All reports and copies of the checks shall be mailed to the EEOC c/o Jeff

Lee, Senior Trial Attorney, 215 Dean A. McGee Ave, Suite 524, Oklahoma City,
Oklahoma 73102.

III. Injunctive Relief

A. Notice Posting

Within fifteen (15) days of the entry of the Consent Decree by the Court, NSC shall post a NOTICE, signed by NSC and the Commission, to all employees (attached hereto as "Attachment A") in a conspicuous place upon its premises where notices and information to employees and applicants for employment, are customarily posted at NSC. This NOTICE will be posted in both Spanish and English. This notice will be posted in each of NSC's Oklahoma locations.. Such Notice shall remain posted for two (2) years from the entry of this decree.

B. Policy and Practice Change

1. Within thirty (30) days of the entry of the Consent Decree by the Court, NSC shall provide a copy to all of its employees of the change in its practice reflecting its emphasis on the elimination of discrimination based on national origin in the payment of wages and the assignment of overtime. Specifically, NSC's new policy shall provide that all compensation decisions for employees will be made by the NSC's chief executive officer or its director of Human Resources for all of NSC's franchise locations.

2. Within thirty(30) days of the entry of the Consent Decree, NSC shall mail copies of both the notice and the change in practice required by Section III, Paragraphs A and B(1), above, to Jeff Lee, Senior Trial Attorney, 215 Dean A. McGee Ave, Suite 524, Oklahoma City, Oklahoma 73102.

3. Within sixty (60) days of the Court's entry of the Consent Decree, NSC shall have each employee sign and acknowledge its change in EEO policy, emphasizing its management policy and practice of not tolerating national origin discrimination in the payment of wages, overtime, and other compensation. NSC shall provide its EEO policy in English and Spanish to all its employees.

C. Training

1. Within ninety (90) days of the Court's entry of the Consent Decree, NSC shall require each of its managers and supervisors for each of its franchise locations as well as its Human Resource Director to attend two hours of employment discrimination training focusing on wage, overtime and other compensation practices. The primary purpose of the training shall be to instruct management personnel on NSC's policy and practice of not tolerating discriminatory practices in wages and overtime based on national origin under Title VII

2. NSC shall conduct a similar two hour live training for its managers and HR personnel during the second year of the Consent Decree.

3. Within five days of the completion of each training session, NSC shall forward a participant log, signed by all attendees, to the EEOC c/o Jeff Lee, Senior Trial Attorney, 215 Dean A. McGee Ave, Suite 524, Oklahoma City, Oklahoma 73102. The participant log shall also contain the typed name, position or title, address, and current email address of each participant, if applicable. The form of the participant log is attached hereto as Attachment B.

4. Within sixty (60) days of the date of hire or promotion, NSC shall cause

each newly hired or newly promoted manager to review with the Human Resources Director the training provided in Sec. III, Paragraph C(1), above, during the duration of the Consent Decree.

D. Inspection and Monitoring

1. NSC shall report to the EEOC within five days after the receipt thereof any complaint (whether oral or written) of national origin discrimination in wages, overtime, or other compensation, received by it from any of its employees. The report shall provide the name of the employee, the date of the EEO complaint, and a brief description of the basis of the alleged complaint. Such reports shall be made by mail to Jeff Lee, Senior Trial Attorney, 215 Dean A. McGee Ave, Suite 524, Oklahoma City, Oklahoma 73102, 405-231-5829, or by e-mail to Mr. Lee at jeff.lee@eeoc.gov.

2. NSC shall fully comply in good faith with all federal and state laws governing the payment of wages, overtime, and other compensation. NSC shall not adopt different wage scales based on an employee's national origin, their citizenship or work status. NSC shall pay its employees overtime wages in accordance with the Fair Labor Standard Act (FLSA) and not make any distinctions in wages, overtime, or other compensation based on national origin, their citizenship, or work status.

3. This consent decree shall not be construed to limit or reduce NCS's obligation to fully comply with Title VII, or regulations promulgated pursuant thereto.

4. For the duration of the Consent Decree, NSC shall allow representatives of the EEOC to inspect the premises of NSC's facilities to assure compliance with this Consent Decree. Such review of compliance shall be initiated by written notice to the

Human Resources Director of NSC or the attorney for NSC at least five (5) business days in advance of any such inspection. NSC has the right to have its attorney present during any such inspection.

E. Reinstatement

As part of the resolution, NSC agrees to reinstate the Charging Party Kennedy Zapet to employment. The EEOC acknowledges NSC has already satisfied this provision and no further reporting is necessary regarding this provision.

IV. Term and Effect of Decree

A. By entering into the Consent Decree, the parties do not intend to resolve any charges of discrimination other than the charge filed by Kennedy Zapet, Charge No. 564-2012-00266.

B. The Consent Decree shall remain in force for a period of two (2) years during which term the Court shall retain jurisdiction for enforcement purposes.

C. The Consent Decree shall be binding upon the parties hereto, their successors, and assigns. NSC shall notify any successors and assigns, including but not limited to any and all purchasers or prospective purchasers, of the obligations of the Consent Decree during the two (2) year term of the Consent Decree. NSC shall notify the EEOC of any prospective sale of any of its franchise locations during the pendency of this Consent Decree.

D. In the event that a dispute arises between the EEOC and NSC regarding the interpretation or application of any provision of this Consent Decree, the party claiming a dispute shall notify the other party in writing and specify the factual basis of such dispute.

Thereafter, the parties shall attempt within thirty (30) days to resolve the dispute. It is understood by the parties that if the dispute cannot be resolved within thirty (30) days, the EEOC may file a motion in this action to enforce the terms of this Consent Decree.

E. The parties shall bear their own costs and attorneys' fees.

SO ORDERED:

10/1/14
DATE

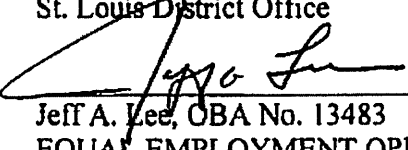

UNITED STATES DISTRICT JUDGE

For the Equal Employment Opportunity Commission:

10-1-2014
Date

s/ Andrea G. Baran
Andrea G. Baran
Regional Attorney

C. Felix Miller
Supervisory Trial Attorney
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
St. Louis District Office


Jeff A. Lee, OBA No. 13483
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Oklahoma City Area Office
215 Dean A. McGee Ave., Suite 524
Oklahoma City, OK 73102
(405) 231-4375
(405) 231-5816 (fax)
jeff.lee@eeoc.gov

Counsel for Plaintiff Equal Employment
Opportunity Commission

For the Defendant, NSC CHICKEN, LP

BY: RM NIX, LLC, GENERAL PARTNER

Date: 9-30-14

BY: 
Thomas R. Nix, Member

Attachment A

NOTICE

This NOTICE is being posted as part of a Consent Decree between NSC Chicken, LP d/b/a Chicken Express and the U.S. Equal Employment Opportunity Commission (EEOC).

Federal law prohibits discrimination against any employee or applicant for employment because of that person's national origin with respect to hiring, compensation, promotion, discharge, terms, conditions or privileges of employment and retaliation for either having opposed or complained about employment practices made unlawful by federal law.

NSC Chicken, LP shall not base its wage scales or rates of pay, overtime rates, or overtime assignments on the national origin of its employees, and shall not retaliate against any current or former employee who has benefited in any way as a result of this Consent Decree.

NSC Chicken, LP, d/b/a Chicken Express strongly supports and shall comply with such Federal law in all respects, and it will not take any action against employees because they have exercised their rights under the law. Should you be retaliated against because you have opposed any practice made unlawful by Title VII of the Civil Rights Act of 1964, as amended, (Title VII) or because you had filed a Charge of Discrimination, testified, assisted, or participated in an investigation, proceeding, or litigation under Title VII or in any other way were discriminated against while employed by NSC Chicken, LP d/b/a Chicken Express, you may seek assistance from:

U.S. Equal Employment Opportunity Commission
Oklahoma Area Office
215 Dean A. McGee Avenue, Suite 524
Oklahoma City, Oklahoma 73102
Telephone Number: (405) 231-4911

NSC, LP hereby reminds all of its employees that discrimination of any kind will not be tolerated. This NOTICE will remain posted until 10-1-2016, by direction of the Equal Employment Opportunity Commission.

SIGNED:



R.M. Nix for
NSC CHICKEN, LP

Date: 9-30-14

